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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 9

SWIFT & COMPANY, INC., and ARMOUR AND COMPANY,

Appellants,

—v.—

DON J. WICKHAM, Commissioner of Agriculture and Markets of the State of New York,

Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF OF INSTITUTE OF AMERICAN POULTRY INDUSTRIES AS AN *AMICUS CURIAE* IN SUPPORT OF APPELLANTS

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This brief is accompanied by written consent of all parties to the case as provided by Rule 42 of the Court.

Interest of *Amicus Curiae*

The Institute of American Poultry Industries is a national voluntary non-profit association. It was organized in 1926 and is comprised of over 500 member firms. Its members are engaged in all phases of the egg and poultry industries, and include producers, breeders, cooperatives, hatcherymen, processors and distributors. All members of the Institute processing poultry for interstate commerce are subject to and are regulated under the provisions of the Poultry Products Inspection Act, 21 U. S. C. 451, 71 Stat. 441.

The poultry and egg industry is the third largest producer of cash farm income and is one of the major segments of American agriculture which functions without the benefit of governmental price support programs. Its welfare is directly dependent upon the acceptance of its products by the consuming public, the law of supply and demand, and a system under which its products may enter the market without unreasonable or unnecessary burdens or restrictions.

The decision and opinion of the District Court, if allowed to stand, will have a profound and adverse effect upon the members of the Institute and seriously burden and interfere with commerce in poultry and poultry products.

The interest of the *amicus* goes far beyond its interest in the pending case. This decision, if allowed to stand, would impair if not destroy the federal regulatory scheme established and carried out under the Poultry Products Inspection Act, and subject the industry to the costs and burdens of an unnecessary multiplicity of regulations.

It will be our purpose in this brief to show that the Congress in enacting the Poultry Products Inspection Act intended to and did vest the authority over the inspection and labeling of poultry products exclusively in the Secretary of Agriculture, and that attempts by the State of New York to prohibit the sale of federally inspected and labeled poultry products by the imposition of requirements not in conformity with the Act are invalid under the Commerce and Supremacy Clauses of the Federal Constitution.

Question Presented

May New York lawfully require that poultry products which have been inspected and labeled in conformity with the Poultry Products Inspection Act bear labeling not authorized by the Secretary of Agriculture?

ARGUMENT

I.

The Poultry Products Inspection Act preempts the field of regulation of the labeling of poultry products inspected under the authority of that Act to the exclusion of the operation of the state statute.

The purpose of the Poultry Products Inspection Act is to establish a federal system of protecting the public by assuring consumers that poultry products bearing the official inspection mark have been inspected and found to be wholesome and that all statements appearing on or accompanying the consumer package have been approved, and to protect interstate commerce in poultry products from uninspected and improperly labeled product.

This purpose is clear from the provisions of the Act itself and its legislative history.

The Committee on Agriculture of the House of Representatives in its report on the bill which became the Poultry Products Inspection Act stated:

> "The purpose of this bill is to establish a system of compulsory inspection by the Federal Government of poultry and poultry products in interstate commerce and in major intrastate consuming areas of such size and consequence as to necessarily affect interstate commerce. Such inspection would be rounded out by requirements as to the maintenance of sanitary facilities and practices and *as to correct and informative labeling of products.*" (Italics added.) House Report No. 465, 85th Congress, 1st Session (1957).

The Committee on Agriculture and Forestry of the United States Senate in its report on the bill stated:

> "The purpose of this bill is to provide for (1) the compulsory inspection of poultry and poultry products for wholesomeness, (2) the maintenance of sanitary facilities and practices, and (3) *correct and informative labeling.* (Italics added.) Senate Report No. 195, 85th Congress, 1st Session (1957).

Under the Poultry Products Inspection Act there is established a comprehensive and pervasive regulatory scheme governing the processing, inspection, packaging and labeling of poultry products for the protection of the consuming public.

The federal regulatory program embodies a procedure which requires the prior approval of all labeling material before it may be used in connection with inspected poultry products.[1] After it has been approved, its use is directly controlled by a federal inspector stationed in the plant where the labeling is applied and no product can be marketed unless it is labeled exactly in the approved manner.[2] The Secretary may direct that any label be withheld if he determines it to be false or misleading in any particular, subject to the right to a hearing and appeal.[3] The immediate container of any poultry product which goes to the consumer, as an integral part of its approved label, must also bear the official inspection mark of the United States Department of Agriculture.[4] The official inspection mark

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[1] 7 CFR, Sec. 81.127 of the Regulations.

[2] 7 CFR, Secs. 81.138, 81.141 of the Regulations.

[3] Section 8(b) of the Act.

[4] 7 CFR, Secs. 81.129, 81.130 of the Regulations.

constitutes a representation by the United States that the product has been inspected, that its labeling has been approved and is not false or misleading in any particular.[5] Under the Act, the Secretary of Agriculture has the responsibility of providing the consuming public with the protection intended by the Act.[6] The requirements that the official insignia of the United States must appear on the consumer package,[7] and that all other written, printed, or graphic matter which appears on or accompanies the consumer package must be approved before use,[8] clearly bring into being a representation to the consuming public that the statements made on the label of federally inspected poultry products are truthful and accurate. The presence of the official insignia, in effect, makes this appear to be a representation on the part of the United States, and preservation of the integrity of the insignia would seem to demand that nothing be added to or carried on the label which does not have the prior approval of the Secretary of Agriculture.

The labeling authority which is vested in the Secretary of Agriculture under the Poultry Products Inspection Act is a necessary and integral part of the federal regulatory inspection scheme.

It is through the control of labeling that the Secretary of Agriculture maintains control of product identity, classification, standardization, and false and deceptive claims or implications.[9] The federal regulatory scheme of superin-

[5] 7 CFR, Secs. 81.127, 81.129, 81.130, 81.131 of the Regulations.

[6] Sections 4(k) and 14 of the Act.

[7] Section 8(a) of the Act.

[8] Section 4(n) of the Act; 7 CFR, Sec. 81.127 of the Regulations.

[9] 7 CFR, Secs. 81.131, 81.134 of the Regulations.

tendence under which all federally inspected poultry products are required to bear the insignia of the United States Department of Agriculture could not be carried out if states could require supplementary label information to be affixed to the product.

The intent of Congress to occupy the field with respect to all matters covered by the Poultry Products Inspection Act, including labeling declarations, was not left by the Congress merely for interpretation or implication from the extensive and detailed duties imposed upon the Secretary of Agriculture by the Poultry Products Inspection Act. Section 18(a) of that Act expressly provides that the jurisdiction of the Secretary within the scope of the Act shall be exclusive. This is a specific and unmistakable mandate and expression of Congressional intent to preempt the field. Further, that section explicitly states that this preemption is for the purpose of preventing and eliminating burdens on commerce in poultry and poultry products.

There is no question but that state regulations must yield if it is the clear and manifest purpose of Congress to occupy the field. *Campbell* v. *Hussey,* 368 U. S. 297, 82 S. Ct. 327, 7 L. Ed. 2d 299; *Rice* v. *Santa Fe Elevator Corporation,* 331 U. S. 218, 67 S. Ct. 1146, 91 L. Ed. 1447.

Congress was aware of the need for a uniform system of inspection and labeling of poultry products to eliminate variations in, and multiplicity of, regulation by the several States and the consequent interference with interstate commerce in poultry products. In the hearings on the legislation before the Committee on Agriculture of the United States House of Representatives, Dr. Cliff D. Carpenter, as President of the Institute of American Poultry Industries, stated:

"Conflicting regulations among different localities had already caused some interference with the growing movement of poultry interstate, even from plants operating under USDA inspection, and both industry and the consumer were faced with the prospect of additional costly and unjustifiable trade barriers." (Hearings before the Subcommittee on Poultry and Eggs of the Committee on Agriculture, House of Representatives, 85th Congress, 1st Session, Serial G at page 74 (1957).)

The legislative history of the Act shows that the language of section 18(a) was inserted in the bill in the House and that it was approved by a Committee of Conference between the two Houses. In explaining the Conference Report to the Senate, the Honorable Hubert H. Humphrey, then Senator Humphrey, submitted a short explanation of the Conference Report which contained the following statement:

"The conference substitute differs from the Senate bill in that under the substitute . . .

(9) The jurisdiction of the Secretary provided by the bill would expressly be made exclusive." (Congressional Record of August 19, 1957, vol. 103, p. 15169.)

In the detailed statement of explanation of the Conference Report the following statement was made:

"The conferees agreed on a substitute for the House amendment, which differs from the Senate bill in the following material respects:

* * * * *

"Ninth, the House amendment provided that the jurisdiction of the Secretary of Agriculture within the scope

of the act would be exclusive. While it is difficult to see how regulation by the Secretary under the act could do otherwise than occupy the field and thereby preclude State regulation of the same subject, this amendment would make it clear that Federal regulation under the bill would preclude State regulation of the same subject.

* * * * *

"Other material points in dispute were determined in accordance with the Senate position as follows:

"... (2) labeling may not be false or misleading 'in any particular'; . . . (4) the House provision providing a rule of construction against invalidation of State law was rejected." (Congressional Record of August 19, 1957, vol. 103, p. 15170.)

There can be no question from the language of the statute and its legislative history but that it was the intent of Congress to occupy the field and preclude State regulation of the matters covered by the Act which include, among other things, all labeling of federally inspected products for the stated purpose of preventing and eliminating burdens on commerce. Inasmuch as the Congress intended to preempt the field, the State regulation must be declared invalid under the Commerce and Supremacy Clauses of the Constitution.

Constitution of the United States, Art. I, Sec. 8, Clause 3; Art. VI, Clause 2;
Rice v. *Santa Fe Elevator Corporation, supra;*
Campbell v. *Hussey, supra.*

II.

The New York statute and regulations are in direct conflict with the Poultry Products Inspection Act and regulations thereunder and must yield.

Section 8 of the Poultry Products Inspection Act requires the consumer package of any poultry product inspected under the authority of the Act to bear, in addition to the official inspection mark, the name of the product, a statement of ingredients if fabricated from two or more ingredients, and the net weight or other appropriate measure of the contents. Any written, printed or graphic matter on the consumer package which is false or misleading in any particular is prohibited. No product name not approved by the Secretary of Agriculture may be used. If the Secretary has reason to believe that any label is false or misleading he may direct that its use be withheld unless it is modified in such manner as he may prescribe so that it will not be false or misleading. The proponent of any label thus rejected may request a hearing on the matter and appeal any final determination, if adverse, to the United States Circuit Court of Appeals.

Under criminal penalty the Act forbids the distribution in commerce of any poultry product unless its consumer package is marked in accordance with the requirements of the Act or if its label is false or misleading in any particular.[10]

Section 14 of the Act directs the Secretary of Agriculture to promulgate rules and regulations necessary to carry out the provisions of the Act.

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[10] Sections 9(a), 9(d), 10, 12(a) of the Act.

In carrying out his duties under the Act, the Secretary of Agriculture has determined that he cannot effectively discharge his responsibilities with respect to labeling without exercising prior approval control over labels to be used on poultry products.[11] Accordingly, the Secretary's regulations require the submission of all labels for examination and approval and no label may be used until approved.[12] No reprint of the official inspection insignia may be used or imprinted on labeling materials until the printer's proof of the label has been approved.[13]

In the case at bar, appellants' labels which were approved by the Secretary of Agriculture for use on appellants' products were the only labels that could lawfully be used. The label approval necessarily involved approval by the Secretary of Agriculture of the name of the product, which in this case was "Stuffed Turkey", and the method of declaring the net weight of the contents of the consumer package, which in this case was the total net weight of the contents, namely the "Stuffed Turkey", a poultry product. Under the Federal Act a poultry product is defined as "any human food product consisting of any edible part of poultry separately or in combination with other ingredients".[14]

The decision of the District Court in upholding the action of the State of New York which prohibits the sale in New York of the federally inspected and labeled poultry product "Stuffed Turkey" unless the product be labeled to show not only the weight of the total poultry product including the stuffing but also to show the weight of the bird without the

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[11] 7 CFR, Sec. 81.125 of the Regulations.

[12] 7 CFR, Sec. 81.126 of the Regulations.

[13] 7 CFR, Sec. 81.127 of the Regulations.

[14] Section 4(e) of the Act.

stuffing, clearly upsets the Federal regulatory scheme and invades the jurisdiction which the Congress vested exclusively in the Secretary of Agriculture and defeats the purposes of the Act. The decision of the District Court in holding that there is no conflict between the State requirements and the Federal requirements as to poultry products in interstate commerce is clearly wrong. The conflict between the State and Federal regulations is unmistakable. It is not a conflict as to a minor detail but goes to the very procedure which has been established for maintaining label control. This is a matter of vital importance and the decision of the court below, if permitted to stand, would clearly frustrate the federal regulatory scheme which has been established under the Poultry Products Inspection Act to assure truthful, accurate, nondeceptive and nonmisleading labeling (including product identification) on the consumer package. It is essential that the Secretary of Agriculture exercise this control if he is to carry out his responsibilities under the Act and if he is to protect the integrity of the insignia of the United States which is required to be on the labeling of poultry products which meet the requirements of the Act.

A holding of federal exclusion of the New York law seems inescapable inasmuch as compliance with both the Federal law and the State law is impossible. Under the Federal law the label used on product must be approved by the Secretary of Agriculture before the product may enter into interstate commerce. The State regulation requires a different label, one not approved by federal authority and one which would, in fact, violate or require the violation of the Federal Act. The conflict is therefore head-on. Two schemes of regulation cannot stand in the same area. Under such circumstances the State regulation must give way in order not to

impair the federal superintendence of the field. *McDermott v. Wisconsin,* 228 U. S. 115, 33 S. Ct. 431, 57 L. Ed. 754.

The observation by the court below that New York's position does not demand any modification in the weight label adjacent to the official inspection mark and its assumption that "New York would be satisfied, as indeed it must be, so long as somewhere on the container there is a statement of the net weight of the bird before stuffing, on which, if need be, any Federal responsibility could be expressly disclaimed" [15] impels us to the conclusion that the court below did not understand that under the Federal Act and regulations thereunder the appellants are not allowed to use any labels that have not been approved by the Secretary of Agriculture, that no multiple weight labels as required by New York for stuffed turkeys have been approved by the Secretary of Agriculture, and that the State of New York is, therefore, requiring the labeling of product as a condition for sale in New York in a manner prohibited by Federal law. The labeling requirement of the New York law would *pro tanto* supplant the federal regulation with another scheme and compromise the Congressional policy expressed in the Poultry Products Inspection Act.

While it is recognized that the State of New York has a legitimate interest in the subject matter of proper labeling, its interest is being and can be adequately served by the federal program of inspection and labeling. The regulations under the Poultry Products Inspection Act authorize the establishment of "specifications covering the principal constituents of any poultry food product with respect to which a specified name of the product or other

[15] 230 F. Supp. at p. 408.

labeling terminology may be used, whenever such action is necessary to prevent sale of the product under a false or deceptive name or other false or misleading labeling."[16] If New York believes that further protection is needed it should seek to invoke this additional protection through the Poultry Products Inspection Act instead of attempting to invade the jurisdiction of the Secretary of Agriculture.

The State's interest would be but slightly impaired, if at all, by the suppression of the applicability of its law and regulation to federally inspected and labeled poultry products. The court below pointed out that neither the New York statute nor regulation defines the term "net weight" used in the statute but stated that "The Director of the Bureau of Weights and Measures of the Department testified that he interpreted the regulation, as applied to stuffed turkeys, to require statement of the net weight both of the unstuffed and of the stuffed bird . . . "[17] The court below also assumed that the courts of New York would sustain this interpretation because of the lack of statutory definition of "net weight". Thus, the interest of New York sought to be protected here rests upon an interpretation given in testimony by the Director of the Bureau of Weights and Measures. An examination of the New York statute and regulations casts doubt as to the correctness of this interpretation which brings the New York statute into conflict with the Federal law and regulations. The New York statute, section 193, subd. 3 of the Agricultural and Markets Law, provides:

> "All food and food products offered for sale at retail *and not in containers* shall be sold or offered for sale by net weight, standard measure or numerical count

[16] 7 CFR, Sec. 81.134(a) of the Regulations.

[17] 230 F. Supp. at p. 401.

under such regulations as may be prescribed by the Commissioner." (Italics added.)

Nothing in the decision of the court below explains how the New York statute, which by its terms applies only to food products "not in containers" and which appears to be confined to providing the measure which must be used in determining the quantity of such products when sold or offered for sale at retail, authorizes the imposition of a requirement of multiple weight labeling on combination food products which are packaged in containers.[18]

Moreover, the New York regulation referred to by the court below expands on the statute since the restrictive language of the statute "and not in containers" does not appear in the regulation.

The definition of "food" and "food products" used in section 193 of the New York law includes "all material, solid, liquid or mixed, whether single or compound", and would clearly permit application of the net weight requirement to the compound, namely the "stuffed turkey".

That the suppression of the New York law and regulations as interpreted by the Director of the Bureau of Weights and Measures would have but slight effect on any legitimate interest of New York is evidenced by the testimony of John Madden, Director of Weights and Measures of the State of New York, who stated that the law was impractical from the standpoint of enforcement with respect to stuffed turkeys, and virtually impossible of enforcement with respect to other meat, poultry and seafood combinations.[19]

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[18] The federally labeled consumer package is a "container" under Section 4(p) of the Poultry Products Inspection Act.

[19] R. pp. 232-234.

The consequences of the decision of the District Court are far reaching and much broader than the issue of labeling stuffed turkey products involved in this case. There are a great number of convenience poultry food products now on the market which are combination or formula products consisting of poultry meat and other ingredients and new ones are being constantly developed.[20] Under the Federal Act and regulations, the Secretary has occasion to consider thousands of labels each year.[20] He must be satisfied that they are truthful, accurate and not false or misleading in any particular. To carry out this responsibility he must know all about the product, its ingredients, and its formula so as to be able to ascertain whether in the processing operation the proper ingredients are used and whether the formula is being followed.[21] Advance label approval is the only practical and effective way for the industry to operate and for the Secretary to carry out his responsibility. A separate statement of the net weight of the components of all the various poultry food products such as TV dinners, Fricassee, Chow Mein, A-La-King, stuffed turkey and the many fabricated poultry products[22] would impose great burdens on the industry and on the Secretary of Agriculture. Whatever goes on the label must be precise, accurate and capable of enforcement. Under modern commercial food technology it is not always possible to determine accurately the weight of a component or ingredient of a poultry product after the preparation of the total product has been completed, because of varying losses in weight in the cooking processes, variations due to

[20] See letter and attachment from United States Department of Agriculture, Appendix D, p. 37a.

[21] 7 CFR, Sec. 81.132 of the Regulations.

[22] 7 CFR, Sec. 81.134 of the Regulations.

moisture transference between ingredients, and other similar causes. Although, it may appear possible in the case of stuffed turkeys and some of the other convenience poultry food products for procedures to be developed which would permit the weight of particular components or ingredients to be ascertained at the time of processing, it would be impracticable if not impossible to develop procedures to so ascertain after the poultry product has been fabricated. It would not be possible, for example, to obtain separate weight criteria in the case of products such as poultry soups, stews, creamed poultry, a-la-kings, and similar products which are produced by batch lot in which the meat portion is determined and regulated by approved formulas and through controlled processing procedures which assure a proper distribution throughout the batch. In fabricating products of this type there necessarily is variation in ingredient content between individual containers. Such variations, however, are not considered significant in good commercial practices and if, as the New York statute requires, the containers are to be required to be labeled to show the specific weight for any particular variable component or ingredient the label cannot but be misleading or deceptive to the consumer.

The realities of modern food technology demonstrate the wisdom of the Congress in the Poultry Products Inspection Act in establishing a comprehensive and exclusive inspection and labeling program which permits experts within the Federal Government to exercise reason and judgment in determining the net weight criteria to be used so that there can be effective enforcement.

The labeling of combination food products with the total net weight of the combination in the manner provided by the Poultry Products Inspection Act is the same procedure

recommended by the National Conference on Weights and Measures[23] in section 32 of its Model State Law on Weights and Measures.[24] This section, representing the consensus of weights and measures officials throughout the country, in essence, recognizes that the only practical means of enforcement of reasonable weights and measures protection for the consumer is a single net weight statement on combination foods.

If the District Court's ruling is permitted to stand and the several States and subdivisions thereof, as the decision implies, are free to require on federally inspected poultry products additional labeling information not approved by the Secretary of Agriculture under the Poultry Products Inspection Act, the poultry industry will be subjected to an intolerable burden. At present, all combination poultry products, including stuffed turkeys, may be sold everywhere in the United States, except the State of New York, with federally approved weight labels. Even in New York, combinations other than stuffed poultry may be sold under the federal label by virtue of that State's enforcement policy. However, it is appropriate to infer from the testimony of Mr. Madden, the New York Director of Weights and Measures that if the decision in this case remains unchanged, that policy will no longer stand.[25]

Under the District Court's opinion neither the Secretary of Agriculture nor the industry can be sure just to what ex-

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[23] The National Conference on Weights and Measures is sponsored by the National Bureau of Standards, U. S. Department of Commerce in implementation of its statutory responsibility for "cooperation with the States in securing uniformity in weights and measures laws and methods of inspection" (31 Stat. 1449; 15 USCA 272).

[24] Appendix B, p. 15a.

[25] R. p. 234.

tent the labeling of federally inspected poultry products is subject to State control. Up to the time of this decision by the District Court in this case there seemed to be no question that the Secretary of Agriculture has complete control over the entire labeling of federally inspected poultry and poultry products. The doubt and confusion arising from the decision of the court below, if it is not reversed, will result in chaos in the labeling of poultry products and such chaos will frustrate and thwart the Congressional policy and impose most serious burdens on interstate commerce.

CONCLUSION

The judgment of the District Court should be reversed.

Respectfully submitted,

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APPENDIX A

The Poultry Products Inspection Act

PUBLIC LAW 85-172

85TH CONGRESS, S. 1747

August 28, 1957

AN ACT

—71 Stat. 441—

To provide for the compulsory inspection by the United States Department of Agriculture of poultry and poultry products.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act [Poultry Products Inspection Act] may be cited as the "Poultry Products Inspection Act".

LEGISLATIVE FINDING

SEC. 2. Wholesome poultry products are an important source of the Nation's total supply of food. Such products are consumed throughout the Nation and substantial quantities thereof move in interstate and foreign commerce. Unwholesome and adulterated poultry products in the channels of interstate or foreign commerce, are injurious to the public welfare, adversely affect the marketing of wholesome poultry products, result in sundry losses to producers, and destroy markets for wholesome poultry products. The marketing of wholesome poultry products is affected with the public interest and directly affects the welfare of the people. All poultry and poultry products which have or are required to have inspection under this Act are either in the current of interstate or foreign commerce or directly affect

such commerce. That part that enters directly into the current of interstate or foreign commerce cannot be effectively inspected and regulated without also inspecting and regulating all poultry and poultry products processed or handled in the same establishment.

The great volume of poultry products required as an article of food for the inhabitants of large centers of population may directly affect the movement of poultry and poultry products in interstate commerce. To protect interstate commerce in poultry and poultry products inspected for wholesomeness, from being adversely burdened, obstructed, or affected by uninspected poultry or poultry products, major consuming areas where poultry or poultry products are handled or consumed in such volume as to affect the movement of inspected poultry or poultry products in interstate commerce should be designated by the Secretary pursuant to the provisions of this Act.

DECLARATION OF POLICY

SEC. 3. It is hereby declared to be the policy of Congress to provide for the inspection of poultry and poultry products by the inspection service as herein provided to prevent the movement in interstate or foreign commerce or in a designated major consuming area of poultry products which are unwholesome, adulterated, or otherwise unfit for human food.

DEFINITIONS

SEC. 4. For purposes of this Act—

(a) The term "commerce" means commerce between any State or the District of Columbia, and any place outside

thereof; or between points within the same State or the District of Columbia, but through any place outside thereof; or within the District of Columbia; and the term "State" includes the Commonwealth of Puerto Rico and the Virgin Islands.

(b) The term "Secretary" means the Secretary of Agriculture.

(c) The term "person" means any individual, partnership, corporation, association, or any other business unit.

(d) The term "poultry" means any live or slaughtered domesticated bird.

—71 Stat. 442—

(e) The term "poultry product" means any poultry which has been slaughtered for human food from which the blood, feathers, feet, head, and viscera have been removed in accordance with rules and regulations promulgated by the Secretary, any edible part of poultry, or, unless exempted by the Secretary, any human food product consisting of any edible part of poultry separately or in combination with other ingredients.

(f) The term "wholesome" means sound, healthful, clean, and otherwise fit for human food.

(g) The term "unwholesome" means:

(1) Unsound, injurious to health, or otherwise rendered unfit for human food.

(2) Consisting in whole or in part of any filthy, putrid, or decomposed substance.

(3) Processed, prepared, packed, or held under unsanitary conditions whereby a poultry carcass or parts thereof

or any poultry product may have become contaminated with filth or whereby a poultry product may have been rendered injurious to health.

(4) Produced in whole or in part from poultry which has died otherwise than by slaughter.

(5) Packaged in a container composed of any poisonous or deleterious substance which may render the contents injurious to health.

(h) The term "adulterated" shall apply to poultry and poultry products under one or more of the following circumstances:

(1) If they bear or contain any poisonous or deleterious substance which may render them injurious to health; but, in case the substance is not an added substance, such poultry and poultry products shall not be considered adulterated under this clause if the quantity of such substance in such poultry and poultry products does not ordinarily render them injurious to health.

(2) If they bear or contain any added poisonous or added deleterious substance, unless such substance is permitted in their production or unavoidable under good manufacturing practices as may be determined by rules and regulations hereunder prescribed by the Secretary or other provisions of Federal law limiting or tolerating the quantity of such added substance on or in such poultry and poultry products: *Provided,* That any quantity of such added substance exceeding the limits so fixed shall also be deemed to constitute adulteration.

(3) If any substance has been substituted, wholly or in part, therefor.

(4) If damage or inferiority has been concealed in any manner.

(5) If any valuable constituent has been in whole or in part omitted or abstracted therefrom.

(6) If any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(i) The term "inspector" means: (1) an employee or official of the United States Government authorized by the Secretary to inspect poultry and poultry products under the authority of this Act, or (2) any employee or official of any State government authorized by the Secretary to inspect poultry and poultry products under authority of this Act, under an agreement entered into between the Secretary and the appropriate State agency.

(j) The term "official inspection mark" means the symbol, formulated pursuant to rules and regulations prescribed by the Secretary, stating that the product was inspected.

(k) The term "inspection service" means the official Government service within the Department of Agriculture

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designated by the Secretary as having the responsibility for carrying out the provisions of this Act.

(l) The terms "container" or "package" include any box, can, tin, cloth, plastic, or any other receptacle, wrapper, or cover.

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(m) The term "official establishment" means any establishment as determined by the Secretary at which inspection of the slaughter of poultry, or the processing of poultry products, is maintained under the authority of this Act.

(n) The term "label" means any written, printed, or graphic material upon the shipping container, if any, or upon the immediate container, including but not limited to an individual consumer package, of the poultry product, or accompanying such product.

(o) The term "shipping container" means any container used or intended for use in packaging the product packed in an immediate container.

(p) The term "immediate container" includes any consumer package; or any other container in which poultry carcasses or poultry products, not consumer packaged, are packed.

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SANITATION, FACILITIES, AND PRACTICES

SEC. 7. (a) Each official establishment slaughtering poultry or processing poultry products for commerce or in or for marketing in a designated major consuming area shall have such premises, facilities, and equipment, and be operated in accordance with such sanitary practices, as are required by regulations promulgated by the Secretary for the purpose of preventing the entry into or flow or movement in commerce or in a designated major consuming area, of poultry products which are unwholesome or adulterated.

(b) The Secretary shall refuse to render inspection to any establishment whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section.

LABELING

SEC. 8. (a) Each shipping container of any poultry product inspected under the authority of this Act and found to be wholesome and not adulterated, shall at the time such product leaves the official establishment bear, in distinctly legible form, the official inspection mark and the approved plant number of the official establishment in which the contents were processed. Each immediate container of any poultry product inspected under the authority of this Act and found to be wholesome and not adulterated shall at the time such product leaves the official establishment bear, in addition to the official inspection mark, in distinctly legible form, the name of the product, a statement of ingredients if fabricated from two or more ingredients including a declaration as to artificial flavors, colors, or preservatives, if any, the net weight or other appropriate measure of the contents, the name and address of the processor and the approved plant number of the official establishment in which the contents were processed. The name and address of the distributor may be used in lieu of the name and address of the processor if the approved plant number is used to identify the official establishment in which the poultry product was prepared and packed. The Secretary may permit reasonable variations and grant exemptions from the foregoing labeling requirements in any manner not in conflict with the purposes of this Act.

(b) The use of any written, printed or graphic matter upon or accompanying any poultry product inspected or required to be inspected pursuant to the provisions of this Act or the container thereof which is false or misleading in any particular is prohibited. No poultry products inspected or required to be inspected pursuant to the provisions of this Act shall be sold or offered for sale by any person, firm, or corporation under any false or deceptive name; but established trade name or names which are

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usual to such products and which are not false and deceptive and which shall be approved by the Secretary are permitted. If the Secretary has reason to believe that any label in use or prepared for use is false or misleading in any particular, he may direct that the use of the label be withheld unless it is modified in such manner as the Secretary may prescribe so that it will not be false or misleading. If the person using or proposing to use the label does not accept the determination of the Secretary, he may request a hearing, but the use of the label shall, if the Secretary so directs, be withheld pending hearing and final determination by the Secretary. Any such determination by the Secretary shall be conclusive unless within thirty days after the receipt of notice of such final determination the person adversely affected thereby appeals to the United States court of appeals for the circuit in which he has his principal place of business or to the United States Court of Appeals for the District of Columbia Circuit. The provisions of section 204 of the Packers and Stockyards Act of 1921 [42 Stat. 162], as amended [7 U. S. C. 194], shall be applicable to appeals taken under this section.

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PROHIBITED ACTS

SEC. 9. The following acts or the causing thereof are hereby prohibited:

(a) The processing, sale or offering for sale, transportation, or delivery or receiving for transportation, in commerce or in a designated major consuming area of any poultry product, unless such poultry product has been inspected for wholesomeness and unless the shipping container, if any, and the immediate container are marked in accordance with the provisions of this Act.

(b) The sale or other disposition for human food of any poultry or poultry product which has been inspected and declared to be unwholesome or adulterated under this Act.

(c) Falsely making or issuing, altering, forging, simulating, or counterfeiting any official inspection certificate, memorandum, mark, or other identification, or device for making such mark or identification, used in connection with the inspection of poultry or poultry products under this Act, or causing, procuring, aiding, assisting in, or being a party to, such false making, issuing, altering, forging, simulating, or counterfeiting, or knowingly possessing, without promptly notifying the Secretary of Agriculture or his representative, uttering, publishing, or using as true, or causing to be uttered, published, or used as true, any such falsely made or issued, altered, forged, simulated, or counterfeited official inspection certificate, memorandum, mark, or other identification, or device for making such mark or identification, or representing that any poultry or poultry product has been officially inspected under the authority of

this Act when such poultry or poultry product has in fact not been so inspected.

(d) Using in commerce, or in a designated major consuming area, a false or misleading label on any poultry product.

(e) The use of any container bearing an official inspection mark except for the poultry product in the original form in which it was inspected and covered by said mark unless the mark is removed, obliterated, or otherwise destroyed.

(f) The refusal to permit access by any duly authorized representative of the Secretary, at all reasonable times, to the premises of an establishment engaged in processing poultry or poultry products for commerce, or in or for marketing in a designated major consuming area, upon presentation of appropriate credentials.

(g) The refusal to permit access to and the copying of any record as authorized by section 11 of this Act.

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(h) The using by any person to his own advantage, or revealing, other than to the authorized representatives of the Government in their official capacity, or to the courts when relevant in any judicial proceeding under this Act, any information acquired under the authority of this Act, concerning any matter which as a trade secret is entitled to protection.

(i) Delivering, receiving, transporting, selling, or offering for sale or transport for human consumption any slaughtered poultry or any part thereof, separately or in

combination with other ingredients (other than poultry products as defined in this Act), in commerce or from an official establishment or in a designated major consuming area, except as may be authorized by and pursuant to rules and regulations prescribed by the Secretary.

COMPLETE COVERAGE OF OFFICIAL ESTABLISHMENTS

SEC. 10. No establishment processing poultry or poultry products for commerce or in or for marketing in a designated major consuming area shall process any poultry or poultry product except in compliance with the requirements of this Act.

RECORDS OF INTERSTATE SHIPMENT

SEC. 11. For the purpose of enforcing the provisions of this Act, persons engaged in the business of processing, transporting, shipping, or receiving poultry slaughtered for human consumption or poultry products in commerce or in a designated major consuming area, or holding such products so received shall maintain records showing, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, or disposition of poultry and poultry products and shall, upon the request of a duly authorized representative of the Secretary, permit him at reasonable times to have access to and to copy all such records. Any record required to be maintained by this section shall be maintained for a period of two years after the transaction, which is the subject of such record, has taken place.

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PENALTIES

SEC. 12. (a) Any person who violates the provisions of section 9, 10, 11, or 17, shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six months, or a fine of not more than $3,000, or both such imprisonment and fine; but if such violation is committed after one conviction of such person under this section has become final such person shall be subject to imprisonment for not more than one year, or a fine of not more than $5,000, or both such imprisonment and fine; but if such violation is committed after two or more convictions of such person under this section have become final such person shall be subject to imprisonment for not more than two years, or a fine of not more than $10,000, or both such imprisonment and fine. When construing or enforcing the provisions of said sections the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of his employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(b) No carrier shall be subject to the penalties of this Act, other than the penalties for violation of section 11, by reason of his receipt, carriage, holding, or delivery, in the usual course of business, as a carrier, of slaughtered poultry or poultry products, owned by another person unless the carrier has knowledge, or is in possession of facts which

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would cause a reasonable person to believe that such slaughtered poultry or poultry products were not inspected or

marked in accordance with the provisions of this Act or were not otherwise eligible for transportation under this Act.

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REGULATIONS

SEC. 14. The Secretary shall promulgate such rules and regulations as are necessary to carry out the provisions of this Act.

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GENERAL PROVISIONS

SEC. 18. (a) For the purpose of preventing and eliminating burdens on commerce in poultry and poultry products, the jurisdiction of the Secretary within the scope of this Act shall be exclusive and poultry and poultry products shall be exempt from the provisions of the Federal Food, Drug, and Cosmetic Act, as amended [21 U. S. C. 301], to the extent of the application or the extension thereto of the provisions of this Act.

(b) In carrying out the provisions of this Act, the Secretary may cooperate with other branches of Government and with State agencies and may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of a State commissioned by the Secretary for such purpose.

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COST OF INSPECTION

SEC. 19. The cost of inspection rendered under the requirements of this Act, shall be borne by the United States, except that the cost of overtime and holiday work performed in establishments subject to the provisions of this Act at such rates as the Secretary may determine shall be borne by such establishments. Sums received by the Secre-

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tary in reimbursement for sums paid out by him for such premium pay work shall be available without fiscal year limitation to carry out the purposes of this section.

* * * * *

SEPARABILITY OF PROVISIONS

SEC. 21. If any provision of this Act or the application thereof to any person or circumstances is held invalid, the validity of the remainder of the Act and of the application of such provision to other persons and circumstances shall not be affected thereby.

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APPENDIX B

Model State Law on Weights and Measures

U. S. DEPARTMENT OF COMMERCE
NATIONAL BUREAU OF STANDARDS

MODEL STATE LAW ON WEIGHTS AND MEASURES

FORM 2

[Provides for a State Division of Weights and Measures and for county and city sealers of weights and measures.]

as adopted by

The National Conference on Weights and Measures

Amendments through 1965

The National Conference on Weights and Measures is sponsored by the National Bureau of Standards in partial implementation of its statutory responsibility for "cooperation with the States in securing uniformity in weights and measures laws and methods of inspection."

Model State Law on Weights and Measures

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF .....

* * * * *

SEC. 32. MEAT, POULTRY, AND SEAFOOD.—Except for immediate consumption on the premises where sold, or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat products, poultry (whole or parts), and all seafood except shellfish, offered or exposed for sale, or sold, as food shall be offered or exposed for sale and sold by weight. When meat, poultry, or seafood is combined with or associated with some other food element or elements to form either a distinctive food product or a food combination, such food product or combination shall be offered or exposed for sale and sold by weight, and the quantity representation may be the total weight of the product or combination, and a quantity representation need not be made for each of the several elements of the product or combination.

APPENDIX C

Regulations Governing the Inspection of Poultry and Poultry Products

(7 C. F. R. Part 81)

Labeling

§81.125 *Containers of poultry required to be labeled.* Except as may be authorized by the Administrator with respect to shipment of products between official establishments, each shipping container and each immediate container of any product shall at the time it leaves the official establishment bear approved labels containing information in accordance with the provisions set forth in §§81.126 to 81.146, inclusive, and the act.

§81.126 *Preparation of marking devices bearing the official inspection mark without advance approval prohibited; exception.* Except for the purposes of preparing and submitting a sample or samples of marking devices, or imprints prepared therefrom, to the Administrator for approval, no person shall procure, make, or prepare, or cause to be procured, made, or prepared, any stencil, or other marking device bearing official identification or any abbreviation, copy or representation thereof, for use on any product without the written authority therefor of the Administrator. However, when any sample stencil, or other marking device or an imprint prepared therefrom is approved by the Administrator for a particular applicant, additional supplies of such stencil, or other marking device of a character identical to such approved sample may be procured, made, or prepared by such applicant, for use in accordance with the regulations, without further approval by the Administrator.

Regulations Governing the Inspection of Poultry and Poultry Products

§81.127 *Labels to be approved by the Administrator.* No label, except printer's proofs bearing official identification shall be printed until the printer's proof or a photostatic copy has been found by the Administrator to be acceptable; and no label or imprint bearing official identification shall be used until finished copies or samples thereof have been approved by the Administrator, except that approval may be given to printer's final proofs or photostatic copies of labels or samples of stenciled and rubber stamped imprints for shipping containers or containers for institutional packs, and no such labels or imprints shall be used until such proofs or copies have been approved by the Administrator.

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§81.129 *Wording and form of the inspection mark.*

Except as otherwise authorized, the inspection mark required to be used with respect to inspected poultry products shall include wording as follows: "Inspected for wholesomeness by U.S. Department of Agriculture." This wording shall be contained within a circle. The form and arrangement of such wording shall be exactly as indicated in the example in Figure 1, except that the appropriate plant number shall be shown, and if the plant number appears elsewhere on the labeling material in the manner prescribed in §81.130(a)(6), it may be omitted from the inspection mark. The Administrator may approve the use of abbreviations of such inspection mark; and such approved abbreviations shall have the same force and effect as the inspection mark. The inspection mark, or the approved abbreviation thereof, shall be printed on consumer packages, or on a label to be securely affixed to such packages. The inspection mark,

or approved abbreviation thereof, shall be applied to shipping containers and may be printed or stenciled thereon, but shall not be applied by rubber stamping.

[*Rubber stamp*—Inspected for Wholesomeness by U.S. Department of Agriculture—P-42—*Figure 1*]

§81.130 *Wording on labels.* (a) Each label approved for use on an immediate container for poultry products shall bear in distinctly legible form the following information:

(1) The common or usual name of the poultry product.

(2) A statement of ingredients if fabricated from two or more ingredients, including a declaration as to artificial flavors, colors, or preservatives, if any. Such ingredients shall be listed by their common or usual names in the order of their descending proportions. For the purpose of this paragraph, the term "chicken meat," unless modified by an appropriate adjective, is construed to mean deboned white and dark meat; whereas, the term "chicken" may include other edible parts such as skin and fat not in excess of their natural proportions, in addition to the chicken meat. If the term "chicken meat" is listed and the product also contains skin, giblets, or fat, it is necessary to list each such ingredient. This terminology shall apply to poultry products prepared from other kinds of poultry where applicable.

(3) The net weight or other appropriate measure of the contents, except that the Administrator may approve the use of labels for certain types of immediate containers which do not bear the net weight: *Provided,* That the retailer or distributor supplying the retailer agrees in writing to the

Administrator to mark the true net weight on the label prior to display and sale thereof: *And provided further,* That the shipping container bears a statement "Net weight to be marked on consumer packages prior to display and sale": *And provided further,* That the total net weight of the contents of the shipping container shall be marked on such container. The net weight marked on containers of poultry products shall be the net weight of the poultry products and shall not include the weights of the wet or dry packaging materials and giblet wrapping materials.

(4) The name and address of the packer or distributor and when the name of the distributor is shown, it shall be qualified by such term as "packed for," "distributed by," or "distributors."

(5) The official inspection mark.

(6) The plant number of the official establishment in which the product was inspected, either within the official inspection mark or clearly visible and in close proximity elsewhere on the exterior of the container, or in the case of canned product, the plant number may be embossed on the lid of each can. In the case of nontransparent consumer packages such as cartons, the plant number may be legibly printed thereon or it may be shown on an insert label placed on top of the product within the package. In the case of transparent wrappers, the plant number may be shown on an insert label and so placed under the transparent covering that it will be clearly visible and legible.

(b) Each label approved for use on a shipping container shall bear in distinctly legible form the following information:

(1) The official inspection mark.

(2) The plant number of the official establishment in which the product was inspected, either within the official inspection mark, or elsewhere on the container clearly visible and in close proximity to the official inspection mark.

(c) Any label which bears the official inspection mark or any written, printed or graphic matter upon or accompanying any poultry product inspected or required to be inspected pursuant to the provisions of the regulations shall not bear any statement that is false or misleading. If the Administrator has reason to believe that any label in use or prepared for use is false or misleading in any particular, he may direct that the use of the label be withheld unless it is modified in such manner as the Administrator may prescribe so that it will not be false or misleading. If the person using or proposing to use the label does not accept the determination of the Administrator, he may request a hearing, but the use of the label shall, if the Administrator so directs, be withheld pending hearing and final determination by the Administrator. Any person so denied the approval of any label shall be notified promptly of the reasons for the denial. A written application for a hearing with respect to the denial may be filed by said person with the Administrator within 10 days after notice of the denial. Such petition shall state specifically the errors alleged to have been made by the Administrator in denying approval of the label. After consideration of the facts adduced at the hearing, any determination with respect to the matter by the Administrator shall be conclusive unless, within 30 days after the receipt of notice of such final determination,

the person adversely affected thereby appeals to the United States Court of Appeals for the Circuit in which he has his principal place of business, or to the United States Court of Appeals for the District of Columbia Circuit. The provisions of section 204 of the Packers and Stockyards Act of 1921, as amended, shall be applicable to appeals taken under this section.

§81.131 *False or deceptive terms or devices; and other labeling requirements.* (a) No product, and no container thereof, shall be labeled with any false or deceptive name, but established trade names which are usual to such articles and are not false or deceptive and which have been approved by the Administrator may be used.

(b) No statement, word, picture, design, or device, which is false or misleading in any particular or conveys any false impression or gives any false indication of origin, identity, or quality, shall appear on any label. For example:

(1) Official grade designations such as the letter grades A, B, and C may be used in labeling individual carcasses of poultry and consumer packages of poultry and poultry products only if such poultry has been graded by a licensed grader of the Federal or Federal-State poultry grading service.

(2) Terms having geographical significance with reference to a particular locality may be used only when the product was produced in that locality.

(3) Terms, such as "baby," may be used to indicate immaturity of poultry which is marketed earlier than the

usual marketing age: *Provided,* That such terms are printed in a style and size of type no larger than is used to indicate the name of the product.

(c) Poultry products which have been treated with compounds to retard spoilage shall be labeled to indicate such treatment.

(d) The terminology specified in subparagraphs (1) through (10) of this paragraph are applicable to parts of poultry cut in the manner described therein.

(1) "Breasts" shall be separated from the back at the shoulder joint and by a cut running backward and downward from that point along the junction of the vertebral and sternal ribs. The ribs may be removed from the breasts, and the breasts may be cut along the breast bone to make two approximately equal halves; or the wishbone portion, as described in subparagraph (3) of this paragraph, may be removed before cutting the remainder along the breast bone to make three parts. Peaces cut in this manner may be substituted for lighter or heavier pieces for exact weight-making purposes and the package may contain two or more of such parts without affecting the appropriateness of the labeling as "chicken breasts." Neck skin shall not be included with the breasts.

(2) *Breasts with ribs* shall be separated from the back at the junction of the vertebral ribs and back. Breasts with ribs may be cut along the breast bone to make two approximately equal halves; or the wishbone portion, as described in subparagraph (3) of this paragraph, may be removed before cutting the remainder along the breast bone to make

three parts. Pieces cut in this manner may be substituted for lighter or heavier pieces for exact weight-making purposes and the package may contain two or more of such parts without affecting the appropriateness of the labeling as "breasts with ribs." Neck skin shall not be included.

(3) "Wishbones" (Pulley Bones), with covering muscle and skin tissue, shall be severed from the breast approximately halfway between the end of the wishbone (hypocledium) and front point of the breast bone (cranial process of the sternal crest) to a point where the wishbone joins the shoulder. Neck skin shall not be included with the wishbone.

(4) "Drumsticks" shall be separated from the thigh by a cut through the knee joint (femorotibial and patellar joint) and from the hock joint (tarsal joint).

(5) "Thighs" shall be disjointed at the hip joint and may include the pelvic meat, but shall not include the pelvic bones. Back skin shall not be included.

(6) "Legs" shall include the whole leg, i.e., the thigh and the drumstick, whether jointed or disjointed. Back skin shall not be included.

(7) "Wings" shall include the entire wing with all muscle and skin tissue intact, except that the wing tip may be removed.

(8) "Backs" shall include the pelvic bones and all the vertebrae posterior to the shoulder joint. The meat shall not be peeled from the pelvic bones. The vertebral ribs and/or scapula may be removed or included without affecting the appropriateness of the title. Skin shall be substantially intact.

(9) "Stripped backs" shall include the vertebrae from the shoulder joint to the tail, and include the pelvic bones. The meat may be stripped off of the pelvic bones.

(10) "Necks", with or without neck skin, shall be separated from the carcass at the shoulder joint.

(11) Parts of poultry may be cut in any manner the processor desires as long as the labeling appropriately reflects the contents of the container of such poultry.

(e) The name of the product required to be shown on labels for fresh or frozen raw whole carcasses of poultry shall be in either of the following forms: The name of the kind (such as chicken, turkey, or duck) preceded by the qualifying term "young" or "mature" or "old", whichever is appropriate; or the appropriate class name as described in paragraph (f) of this section. The name of the kind may be used in addition to the class name, but the name of the kind alone without the qualifying age or class term is not acceptable as the name of the product. The class name may be appropriately modified by changing the word form such as using the term "roasting chicken", rather than "roaster". The name "chicken" may be used without qualification with respect to a ready-to-cook pack of fresh or frozen cut-up young chickens, or a half of a young chicken, and the name "duckling" may be used without qualification with respect to a ready-to-cook pack of fresh or frozen young ducks. The appropriate names for cut-up parts are set forth in paragraph (d) of this section. When naming parts cut from young poultry, the identity of both the kind of poultry and the name of the part shall be included in the product name. The product name for parts or portions

cut from mature poultry shall include, along with the part or portion name, the class name or the qualifying term "mature". The name of the product for cooked or heat processed poultry products shall include the kind name of the poultry from which the product was prepared.

(f) The appropriate class names for the various kinds of poultry are as follows:

(1) *Chickens*—(i) *Rock Cornish game hen or Cornish game hen.* A Rock Cornish game hen or Cornish game hen is a young immature chicken (usually 5 to 6 weeks of age) weighing not more than 2 pounds ready-to-cook weight, which was prepared from a Cornish chicken or the progeny of a Cornish chicken crossed with another breed of chicken.

(ii) *Broiler or fryer.* A broiler or fryer is a young chicken (usually 9 to 12 weeks of age), of either sex, that is tender-mated with soft, pliable, smooth-textured skin and flexible breastbone cartilage.

(iii) *Roaster.* A roaster is a young chicken (usually 3 to 5 months of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that may be somewhat less flexible than that of a broiler or fryer.

(iv) *Capon.* A capon is a surgically unsexed male chicken (usually under 8 months of age) that is tender-meated with soft, pliable, smooth-textured skin.

(vi) *Stag.* A stag is a male chicken (usually under 10 months of age) with coarse skin, somewhat toughened and darkened flesh, and considerable hardening of the breastbone cartilage. Stags show a condition of fleshing and a

degree of maturity intermediate between that of a roaster and a cock or old rooster.

(vii) *Hen or stewing chicken or fowl.* A hen or stewing chicken or fowl is a mature female chicken (usually more than 10 months of age) with meat less tender than that of a roaster, and nonflexible breastbone tip.

(viii) *Cock or rooster.* A cock or rooster is a mature male chicken with coarse skin, toughened and darkened meat, and hardened breastbone tip.

(2) *Turkeys*—(i) Fryer-roaster turkey. A fryer-roaster turkey is a young immature turkey (usually under 16 weeks of age), of either sex, that is tender-meated with soft, pliable, smooth-textured skin, and flexible breastbone cartilage.

(ii) *Young hen turkey.* A young hen turkey is a young female turkey (usually 5 to 7 months of age) that is tender-meated with soft, pliable, smooth-textured skin, and breastbone cartilage that is somewhat less flexible than in a fryer-roaster turkey.

(iii) *Young tom turkey.* A young tom turkey is a young male turkey (usually 5 to 7 months of age), that is tender-meated with soft, pliable, smooth-textured skin and breastbone cartilage that is somewhat less flexible than in a fryer-roaster turkey.

(iv) *Yearling hen turkey.* A yearling hen turkey is a fully matured female turkey (usually under 15 months of age) that is reasonably tender-meated and with reasonably smooth-textured skin.

(v) *Yearling tom turkey.* A yearling tom turkey is a fully matured male turkey (usually under 15 months of age) that is reasonably tender-meated and with reasonably smooth-textured skin.

(vi) *Mature turkey or old turkey (hen or tom).* A mature or old turkey is an old turkey of either sex (usually in excess of 15 months of age) with coarse skin and toughened flesh.

(3) *Ducks*—(i) *Broiler duckling or fryer duckling.* A broiler duckling or fryer duckling is a young duck (usually under 8 weeks of age), of either sex, that is tender-meated and has a soft bill and soft windpipe.

(ii) *Roaster duckling.* A roaster duckling is a young duck (usually under 16 weeks of age), of either sex, that is tender-meated and has a bill that is not completely hardened and a windpipe that is easily dented.

(iii) *Mature duck or old duck.* A mature duck or an old duck is a duck (usually over 6 months of age), of either sex, with toughened flesh, hardened bill, and hardened windpipe.

(4) *Geese*—(i) *Young goose.* A young goose may be of either sex, is tender-meated, and has a windpipe that is easily dented.

(ii) *Mature goose or old goose.* A mature goose or old goose may be of either sex and has toughened flesh and hardened windpipe.

(5) *Guineas*—(i) *Young guinea.* A young guinea may be of either sex, is tender-meated, and has a flexible breastbone cartilage.

(ii) *Mature guinea or old guinea.* A mature guinea or an old guinea may be of either sex, has toughened flesh, and a hardened breastbone.

§81.132. *Formulas required.* Copies of each label submitted for approval shall, when the Administrator requires, be accompanied by a statement showing the kinds and percentages of the ingredients by their common or usual names comprising the poultry product and by a statement indicating the method of preparation of the product with respect to which the label is to be used. Approximate percentages may be given in cases where the percentages of ingredients may vary from time to time, if the limits of variation are stated.

§81.134 *Product specifications for labeling purposes.*

(a) *Authorization to establish specifications.* The Administrator is authorized to establish specifications covering the principal constituents of any poultry food product with respect to which a specified name of the product or other labeling terminology may be used, whenever such action is necessary to prevent sale of the product under a false or deceptive name or other false or misleading labeling. The requirements of this section are hereby found to be necessary for this purpose.

(b) *Labeling terminology for light and dark chicken or turkey meat.* Product containing light and dark chicken or turkey meat in quantities other than natural proportions, as indicated in Table I, must have a qualifying statement in close conjunction with the name of the product indicating, as shown in Table I of this paragraph, the types of meat

actually used, except that when the product contains less than 10 percent cooked deboned poultry meat or is processed in a manner that the character of the light and dark meat is not distinguishable, the qualifying statement will not be required. The qualifying statement must be in type at least one-half the size and of equal boldness as the name of the product; e.g., Boned Turkey (Dark Meat). If a product contains light and dark meat in natural proportions and bears a label referring to light or dark meat content, the label shall include a qualifying statement in accordance with this paragraph.

TABLE I

Terminology	Percent light meat	Percent dark meat
Natural proportions	50-65	50-35.
Light or white meat	100	0.
Dark meat	0	100.
Light and dark meat	51-65	49-35.
Dark and light meat	35-49	65-51
Mostly white meat	66 or more	34 or less.
Mostly dark meat	34 or less	66 or more.

(c) *Poultry meat content of poultry food products*—(1) *General.* (i) Where cooked poultry meat is specified in this section as an ingredient of poultry food products, this means poultry meat derived from poultry processed, cooked and cooled in a manner approved by the Administrator without use of a liquid or moisture in direct contact with the poultry meat following the cooking and cooling of the poultry.

(ii) If, following cooking and cooling of poultry meat to be used in poultry food products, liquid or moisture is used in direct contact with such poultry meat and the percentage of solids, excluding salt, in the poultry meat is found to be below 34 percent when such poultry meat is tested by approved methods, the percentage of poultry meat required by this section for any poultry food product shall be increased in proportion to the deficiency, or the meat shall be so processed as to raise the solids content, excluding salt, to 34 percent. The official plant shall furnish adequate facilities for such testing.

(2) *Canned boned poultry.* (i) Canned boned poultry shall, unless otherwise specified in this subparagraph (2), be prepared from cooked deboned poultry meat and may contain skin and fat not in excess of natural proportions. Gelatin, stabilizers or similar solidifying or emulsifying agents shall not be added to product labeled "Boned (Kind)—Solid Pack," but may be added in quantities not in excess of a total of 0.5 percent of the total ingredients in the preparation of other canned boned poultry products and in such case the common name of the substance added shall be included in the name of the product, e.g., "Boned Chicken with Broth—Gelatin Added."

(ii) Canned boned poultry, except poultry within subdivision (iv) of this subparagraph, shall meet the requirements set forth in Table II of this paragraph. The percentages in Table II shall be calculated on the basis of the total ingredients used in the preparation of the product.

(iii) Canned shredded poultry (Shredded (Kind)) consists of poultry meat from the back, wings, and neck, sepa-

rately or in combination, and shall be prepared as set forth in Table II, item 1, 2, 3 or 4, whichever is applicable. In addition, poultry meat from other parts may be used. Skin and fat not in excess of natural proportions of the parts used may be included.

(iv) Canned boned poultry with natural juices (Boned (Kind) with natural juices) shall be prepared from either raw boned poultry meat or a mixture of raw boned poultry meat and cooked boned poultry meat, and shall have no liquid added during the preparation of the product.

TABLE II

Product name	Minimum percent cooked deboned poultry meat of kind indicated, with skin, fat, and seasoning	Maximum percent liquid that may be added [1]
1. Boned (Kind)—Solid Pack	95	5
2. Boned (Kind)	90	10
3. Boned (Kind) with Broth[2]	80	20
4. Boned (Kind) with percent Broth[2 3]	50	50
5. Strained or Chopped (Kind) with Broth[2 4]	43	57

[1] Liquid may be in the form of, but is not limited to, broth or extractives.

[2] Alternatively, product may be prepared from raw boned poultry meat in combination with cooked boned poultry meat so long as the product complies with the specified standard.

[3] Total amount of liquid added shall be included in the name of the product; e.g., "Boned Chicken with 25 percent Broth."

[4] Label must indicate in some manner that product is for infant or geriatric servings.

(3) *Poultry dinners (frozen) and pies.* Poultry dinners (frozen) and pies shall meet the requirements set forth in Table III of this paragraph and the percentage or weight shall be calculated on the basis of total ingredients used in the preparation of the products.

TABLE III

Product name	Minimum cooked deboned poultry meat of kind indicated			Minimum raw deboned poultry meat of kind indicated		
	Percent		Weight	Percent		Weight
(Kind) Pies	14	or	1⅛ oz. per 8-oz. pie	or 25	or	2 oz. per 8-oz. pie
(Kind) Dinners	[1] [2] 18		[2] 2 oz.			

[1] Excluding weight of appetizers, desserts, etc.

[2] 18 percent or 2 ounces, whichever is greater. A minimum of 45 percent, or 5 ounces per dinner, whichever is greater, of cooked poultry including bone and breading may be used in lieu of minimum 18 percent or 2 ounces of cooked deboned poultry meat and the cooked poultry including bone and breading shall not contain more than 30 percent breading.

(4) *Poultry rolls.* (i) Binding agents, including but not limited to gelatin and wheat gluten, may be added in quantities not in excess of a total of 3 percent for cooked rolls and 2 percent for raw rolls, based on the total ingredients used in the preparation of the product, without affecting the name of the product. However, when such agents are added in excess of 3 percent or 2 percent, whichever is applicable, the common name of the agent or the term "Binders Added" shall be included in the name of the product; e.g., "Turkey Roll—Gelatin Added."

(ii) With respect to heat processed rolls, 2 percent or less liquid based on the weight of the finished product without liquid may remain with or be returned to product labeled as "(Kind) Roll."

(iii) Heat processed rolls which have more than 2 percent liquid remaining with or returned to the product shall be labeled as "(Kind) Roll with Natural Juices." If any liquid other than natural cookout juices is added, the product must be labeled to indicate that fact; e.g., "Turkey Roll with Broth." Liquid shall not be returned or added to product within this subdivision (iii) in excess of the amount normally cooked out during preparation.

(5) (*Kind*)—*burgers.* Such product shall consist of 100 percent poultry meat of the kind indicated, with skin and fat not in excess of natural proportions. Product containing fillers or binders shall be named "(Kind) Patties."

(6) *Other poultry dishes and specialty items.* (i) Poultry dishes and specialty items listed in Table IV of this paragraph shall meet the requirements set forth in said Table, irrespective of the type of packaging, and the percentages in Table IV shall be calculated on a ready-to-serve basis, except that soup bases in institutional packs which are prepared for sale to institutional users shall have a minimum of 15 percent cooked deboned poultry meat based on the weight of the soup base product. Products similar to those listed in Table IV, but having less than the specified minimum poultry meat content, may use the "Kind" name in the product name, provided it is appropriately qualified to distinguish such products from those containing the specified minimum meat content.

(ii) Products of the types specified in §§81.208 (a) and (b) will be deemed to have false, deceptive or misleading labeling if they use the "Kind" name of the poultry (chicken, turkey, etc.) in the product name without appropriate qualification. For example, a consumer packaged noodle soup product containing less than 2 percent chicken meat on a ready-to-serve basis may not be labled as "Chicken Noodle Soup" but, when appropriate, could be labled as "Chicken Flavored Noodle Soup."

TABLE IV

Product name[1]	Minimum percent cooked deboned poultry meat of kind indicated	Minimum percent cooked poultry of kind indicated, including bone
(Kind) Ravioli	2	
(Kind) Soup	2	
Chop Suey with (Kind)	2	
(Kind) Chop Suey	4	
(Kind) Chow Mein without noodles	4	
(Kind) Tamales	6	
Noodles or Dumplings with (Kind)[2]	6	
(Kind) Stew	12	
(Kind) Fricassee of Wings		40
(Kind) Noodles or Dumplings[2]	15	30
Creamed (Kind)	20	
(Kind) Cacciatore	20	40
(Kind) Fricassee	20	40
(Kind) A-La-King	20	
Sliced (Kind) with Gravy	35	
Minced (Kind) Barbecue	40	

[1] The product name may contain other appropriate descriptive terms such as "noodle"; e.g., "Chicken Noodle Soup".

[2] Product also includes rice or similar starches.

Regulation Governing the Inspection of Poultry and Poultry Products

§81.138. *Evidence of label approval.* No inspector shall authorize the use of official identification for any inspected product unless he has on file evidence that such official identification or packaging material bearing such official identification has been approved in accordance with the provisions of §81.127.

§81.141. *Affixing of official identification.* No official identification or any abbreviation, copy or representation thereof may be affixed to or placed on or caused to be affixed to or placed on any product or container thereof except by an inspector or under the supervision of an inspector or other person authorized by the Administrator. All such products shall have been inspected as required by the regulations in this part.

APPENDIX D

United States Department of Agriculture Letter and Attachment

UNITED STATES DEPARTMENT OF AGRICULTURE
CONSUMER AND MARKETING SERVICE
WASHINGTON, D. C. 20250

August 19, 1965

Mr. Joseph Parker
Pace and Parker
Washington Building, Room 531
15th Street and New York Avenue, N.W.
Washington, D. C. 20005

Dear Mr. Parker:

This is in response to your written request concerning certain specific information about the labeling of poultry products. This Division receives about 14,000 applications for label approval each year. About 9,500 of these are approved; the remainder disapproved for various reasons. A large proportion of these labels are for poultry products containing poultry meat combined with other products to provide consumers with convenience food items.

Your second question concerned the number of different items and a listing of the types of composite foods being processed under the poultry inspection program. The attached listing may not be complete. However, it illustrates the types of product which are labeled and processed under the Poultry Products Inspection Act.

Sincerely yours,

/s/ HERMON I. MILLER
Hermon I. Miller
Director, Poultry Division

Attachment

United States Department of Agriculture
Letter and Attachment

FORMULA PRODUCTS

Chicken noodle soup
Chicken rice soup
Chicken vegetable soup
Chicken gumbo soup
Cream of chicken soup
Kosher chicken soup
Miscellaneous chicken soup

Chicken soup base
Chicken noodle soup base
Chicken gravy base
Chicken rice soup base
Chicken gumbo soup base
Soup base with chicken fat
Soup base chicken flavored

Turkey soup base

Chicken broth
Chicken broth with rice
Chicken broth with noodles

Turkey broth

Turkey noodle soup
Turkey rice soup
Turkey vegetable soup
Turkey gumbo soup
Cream of turkey soup

Chicken bouillon
Chicken consomme

Turkey pie
Chicken pie

Chicken pie filling
Turkey pie filling

Chicken turnover
Turkey turnover

Fried chicken dinner
Creamed chicken dinner
Baked chicken dinner
Barbequed chicken dinner
Chicken and dumpling dinner

Sliced turkey dinner
Roast turkey dinner

Chicken 3 course dinner
Turkey 3 course dinner

Fried chicken with mashed potatoes
Sliced turkey with gravy
Sliced turkey with gravy and dressing
Sliced turkey with gravy and mashed potatoes

Breaded chicken croquette
Chicken croquette
Chicken loaf
Breaded chicken patties

United States Department of Agriculture
Letter and Attachment

FORMULA PRODUCTS (Cont.)

Chicken patties
Breaded chicken wedges
Breaded turkey croquettes
Turkey croquettes
Turkey loaf
Breaded turkey patties
Turkey patties
Chicken hash
Turkey hash
Chicken salad
Turkey salad
Chicken sticks
Breaded turkey fillets
Turkey fillets
Turkey steak
Chicken steak

Chicken liver spread
Chicken pate
Chopped chicken liver salad
Smoked turkey pate
Chicken liver with vegetables

Chicken gravy
Chicken with vegetables and gravy
Turkey gravy
Chicken a la King
Turkey a la King
Creamed chicken
Creamed turkey
Chicken with sauce

Chicken fricassee
Turkey fricassee

Chicken and noodles
Noodles and chicken
Chicken and dumplings
Dumplings and chicken
Turkey and noodles
Noodles and turkey
Chicken and rice
Rice and chicken
Chicken spaghetti
Chicken ravioli
Turkey ravioli
Chicken casserole
Turkey casserole

Turkey roll
Chicken roll

Whole chicken
Stuffed whole chicken
Whole smoked chicken
Boned duckling
Stuffed Rock Cornish Game Hen
Smoked Rock Cornish Game Hen
Smoked whole turkey
Smoked pheasant
Precooked and breaded frying chicken parts

United States Department of Agriculture
Letter and Attachment

FORMULA PRODUCTS (Cont.)

Precooked and breaded stuffed frying chicken parts
Chicken roast
Turkey roast
Rendered chicken fat
Chicken scrapple

Cooked turkey giblets
Boned chicken
Shredded chicken
Shredded turkey
Boned turkey
Dehydrated chicken
Dehydrated turkey
Cooked chicken skin

Strained chicken baby food
Strained turkey baby food
Junior chicken baby food
Junior turkey baby food

Chicken hors d'oeuvres
Turkey hors d'oeuvres
Turkey luncheonmeat
Chicken lunchmeat

Chicken chow mein
Chow mein with chicken
Turkey chow mein
Chicken chop suey
Fried rice with chicken
Chicken barbeque
Turkey barbeque
Chicken cacciatori
Turkey cacciatori
Chicken tetrazzini
Turkey tetrazzini
Chicken tamales
Turkey tamales
Turkey sausage
Chicken sausage
Chicken stew
Chicken enchilades
Chicken a la Kiev
Turkey sandwich
Chicken sandwich
Chicken souffle

Chicken chilli
Turkey chilli
Chicken cracklings

APPENDIX E

Article I, Clause 3 and Article VI, Clause 2 of the Constitution of the United States

Art. I, Sec. 8, Clause 3

"The Congress shall have Power * * * To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;"

Art. VI, Clause 2

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."

APPENDIX F

Agricultural and Markets Law of the State of New York

§193. *Method of sale of food and food products*

1. Definition of "food" and "food product". The terms "food" and "food product" as used in this section shall include all material, solid, liquid or mixed, whether simple or compound, used or intended for consumption by human beings or domestic animals normally kept as household pets and shall also include all substances or ingredients to be added thereto for any purpose.

2. All food and food products which are sold, offered or exposed for sale by wholesalers, packers, distributors or jobbers shall be sold or offered for sale by net weight, numerical count or standard measure, whichever term shall be applicable, and shall be plainly marked by such person or persons offering the food or food products for sale, in such form or manner as may be prescribed by the commissioner, except that it shall not be necessary to so mark meat, meat products or fish, except shellfish in natural form, provided the net weight be stated on a written invoice and on the shipping container of the meat, meat product or fish.

3. All food and food products offered for sale at retail and not in containers shall be sold or offered for sale by net weight, standard measure or numerical count under such regulations as may be prescribed by the commissioner.

4. All food and food products which are packaged or wrapped by the retailer in advance of being exposed or offered for sale by the retailer shall be accurately marked in such form or manner as may be prescribed by the commissioner, with (a) the net weight or standard measure

or numerical count; (b) the selling price per pound or unit of standard measure, and (c) the total selling price.

5. Wherever food or food products are packaged or wrapped for sale by a retailer in advance of being sold or offered for sale, an accurate computing scale shall be maintained so placed as to be easily available to customers.

6. This section shall not apply to sales of (a) eggs, fresh fruits, fresh vegetables, grains and nuts; (b) milk and cream as set forth in section one hundred ninety-one of this chapter; (c) malt beverages as set forth in section one hundred ninety-two-c of this chapter; (d) bread, as set forth in section one hundred ninety-three-a of this chapter; (e) frozen desserts as set forth in section one hundred ninety-three-d of this chapter; (f) alcoholic beverages; and (g) drugs and pharmaceuticals. Added L. 1962, c. 770, §2; amended L. 1963, c. 377, eff. April 16, 1963.

APPENDIX G

New York State Regulations

STATE OF NEW YORK

DEPARTMENT OF AGRICULTURE AND MARKETS

WEIGHTS AND MEASURES MANUAL—Circular 834

221.9. METHOD OF SALE OF SPECIFIC COMMODITIES

* * * * *

(c) *Meat, poultry and fish.* Except for immediate consumption on the premises where sold or as one of several elements comprising a ready-to-eat meal sold as a unit for consumption elsewhere than on the premises where sold, all meat, meat food products, poultry (whole or parts) and all seafood except shellfish, offered or exposed for sale or sold, as food shall be offered or exposed for sale and sold by net weight. The meaning of the words meat and meat food products as used in this section is that defined in Section 96-g of the Agriculture and Markets Law.

* * * * *

221.40. MEAT, POULTRY AND FISH. Meat, poultry and fish shall be sold or offered for sale as food at retail by net weight only.